

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1768 of 1980
Date of Decision: 23.8.2006

Avtar Singh

...Appellant

Versus

Union of India and others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri T.N. Gupta, Advocate, for the appellant.

Shri D.S. Patwalia, Advocate, for the respondent.

JUDGMENT

Plaintiff-Avtar Singh is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby their challenge to the certificate of recovery of arrears of the income tax dated 2.09.1975 in respect of the property, which is subject matter of suit, was dismissed on the ground that the suit property belongs to the defaulter i.e. Ratan Singh and not Sher Singh, as propounded by the plaintiffs.

Briefly, it would be relevant to note that Ratan Singh son of Sher Singh was in arrears of income tax dues amounting to Rs.12,524/- for the assessment years 1955-56 to 1962-63. The Income Tax Department issued recovery certificate to recover the arrears on 2.09.1975. In pursuance of the said recovery certificate, the property in dispute was attached on 22.9.1975. The objections against the said attachment, were dismissed and thereafter, the plaintiffs filed the present suit to establish rights over the suit property. It is the case of the appellants that Sher Singh has purchased the

property in dispute vide registered sale deed Exhibit P.1 in the year 1942 and, therefore, the property could not have been put to attachment in pursuance of recovery of arrears of income tax dues against Ratan Singh, who died on 12.11.1969 pre-deceasing his father Sher Singh.

Still further, it is the case of the plaintiffs that Sher Singh has executed Will in favour of the plaintiffs on 22.2.1972 and, therefore, the property could not have been attached and sold in execution of the recovery certificate. Both the Courts have dismissed the suit holding that Sher Singh is not proved to be the purchaser of the property in dispute and that Will dated 22.2.1972 relied by the plaintiffs, is not proved to be executed.

At the time of hearing of the present appeal, the learned counsel for the appellants has pointed out that the arrears of income tax due against Rattan Singh, have since been paid and the property attached on 22.9.1975 has since been released from the attachment.

In view of the said fact, when the property has been released from attachment and the income tax dues have been paid, I do not find that any lis in the present suit survives. It shall be open to the plaintiffs to establish their title in respect of the suit property by virtue of the sale deed and the Will in appropriate proceedings as and when any such question arises or is sought to be established by the plaintiffs. The suit out of which the present appeal arises, is thus, dismissed having been rendered infructuous.